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HOUSE BILL 893

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Benjamin H. Rodefer

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE RESIDENTIAL SOLAR TECHNOLOGY IMPROVEMENT DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE RESIDENTIAL SOLAR TECHNOLOGY IMPROVEMENT DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Residential Solar Technology Improvement District Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. the production and efficient use of energy will continue to play a central role in the economic future of the state and the nation;

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1 B. the development of residential renewable energy
2 sources will advance the security, economic well-being and
3 public and environmental health of the state, as well as
4 contributing to the energy independence of the nation;

5 C. it is in the best interests of the state,
6 municipalities and counties to promote the development of
7 residential renewable energy sources; and

8 D. the creation and administration of residential
9 solar technology improvement districts to facilitate
10 residential photovoltaic solar technology projects will serve a
11 valid public purpose and is expressly declared to be in the
12 public interest.

13 Section 3. DEFINITIONS.--As used in the Residential Solar
14 Technology Improvement District Act:

15 A. "county" means any county, including an H class
16 county;

17 B. "debt service" means the principal of, interest
18 on and premium, if any, on the bonds, when due, whether at
19 maturity or prior redemption and fees and costs of agents
20 necessary to handle the bonds and the costs of credit
21 enhancement or liquidity support;

22 C. "district" means a residential solar technology
23 improvement district formed pursuant to the Residential Solar
24 Technology Improvement District Act by a municipality or by a
25 county in an unincorporated area or in an incorporated area

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1 with the municipality's consent;

2 D. "district board" means the board of directors of
3 the district, which shall be composed of the members of the
4 governing body of the municipality or county in which the
5 district is located, or at the option of the governing body,
6 five directors appointed by the governing body, as provided in
7 Section 10 of the Residential Solar Technology Improvement
8 District Act. The board shall serve until replaced by elected
9 directors, which shall occur not later than six years after the
10 date on which the resolution establishing the district is
11 enacted;

12 E. "election" means an election held in compliance
13 with the provisions of the Residential Solar Technology
14 Improvement District Act;

15 F. "governing body" means the body or board that by
16 law is constituted as the governing body of the municipality or
17 county in which the solar technology improvement district is
18 located;

19 G. "municipality" means an incorporated city,
20 village or town;

21 H. "owner" means the person who is listed as the
22 owner of real property in the district on the current property
23 tax assessment roll;

24 I. "special assessment" means a levy imposed
25 against real property within a district; and

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1 J. "residential solar technology improvement" means
2 a photovoltaic energy system installed on residential property
3 that collects or absorbs sunlight for conversion into
4 electricity.

5 Section 4. RESIDENTIAL SOLAR TECHNOLOGY IMPROVEMENT
6 DISTRICTS AUTHORIZED.--

7 A. A governing body of a municipality or county may
8 form a residential solar technology improvement district for
9 the purpose of encouraging, accommodating and financing
10 residential solar technology improvements. A residential solar
11 technology improvement district shall include only property for
12 which an owner executes an agreement consenting to the
13 inclusion of the property within the district and to the
14 imposition of a special assessment on the property for the
15 purpose of financing residential solar technology improvements.

16 B. A residential solar technology improvement
17 district formed by a municipality shall be wholly within the
18 boundaries of the municipality. A residential solar technology
19 improvement district formed by a county shall be wholly within
20 the boundaries of the county and shall be in the unincorporated
21 area of the county, or may include an incorporated area with
22 the municipality's consent. A residential solar technology
23 improvement district may include contiguous and noncontiguous
24 property.

25 C. Except as otherwise provided in this section, a
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1 residential solar technology improvement district shall be a
2 political subdivision of the state, separate and apart from the
3 municipality or county.

4 Section 5. RESOLUTION DECLARING INTENTION TO FORM
5 DISTRICT.--

6 A. A governing body may adopt a resolution
7 declaring its intention to form a residential solar technology
8 improvement district. The resolution shall state the
9 following:

10 (1) the purposes for which the district is to
11 be formed;

12 (2) that the district shall include only
13 property for which the owner has agreed to the inclusion of the
14 property within the district, and that inclusion of property
15 may occur subsequent to the adoption of the resolution forming
16 the district;

17 (3) the process by which a property owner can
18 execute an agreement to include property in the district;

19 (4) that inclusion of property in the district
20 will result in the imposition of special assessments on the
21 property to pay the costs of the approved residential solar
22 technology improvements, financing and administrative fees;

23 (5) the method of calculating the amount of
24 the special assessment and the manner of collection of the
25 special assessment;

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1 (6) that standards and requirements will be
2 set by the district board for residential solar technology
3 improvements to be installed on property in the district;

4 (7) a reference to the Residential Solar
5 Technology Improvement District Act; and

6 (8) that the district will be governed by a
7 district board composed of the members of the governing body or
8 by five directors to be appointed by the governing body.

9 B. The resolution shall direct that a hearing on
10 formation of the district be scheduled and notice be published
11 as required for public hearings of the governing body.

12 Section 6. HEARING--FORMATION OF A DISTRICT.--

13 A. At the hearing on formation of the district,
14 the governing body shall accept and pass on written and oral
15 testimony and evidence presented in support of or in opposition
16 to the formation of the district. After hearing the written
17 and oral testimony, the governing body shall determine whether
18 the district should be formed based on the interests,
19 convenience or necessity of the owners of property in the
20 proposed district and the citizens of the municipality or
21 county in which the proposed district would be located.

22 B. If the governing body determines that the
23 district should be formed, it shall adopt a resolution ordering
24 that the district be formed and identifying the method by which
25 property owners can execute agreements to have their property

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1 included in the district. The resolution shall state that the
2 district will be governed by a district board consisting of
3 members of the governing body, or upon determination of the
4 governing body, five directors appointed by the governing body.
5 The resolution shall state that one or more subsequent
6 resolutions shall be adopted by the district board to identify
7 the property to be included in the district and the special
8 assessment to be imposed on that property.

9 C. The governing body shall cause a copy of the
10 resolution ordering formation of the district to be delivered
11 to the county assessor and county treasurer of the county in
12 which the district is located, the taxation and revenue
13 department and the local government division of the department
14 of finance and administration.

15 D. Subsequent to the formation of the district,
16 property may be included in the district by execution of an
17 agreement by the owner of the property and the district board,
18 agreeing to the inclusion of the property and the imposition of
19 a special assessment on the property, and the district board
20 shall adopt a supplemental resolution to this effect. The
21 district shall deliver a copy of the resolution to the county
22 assessor and county treasurer of the county in which the
23 district is located. A copy of the resolution and a
24 description of the property included in the district shall be
25 recorded with the county clerk of the county in which the

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1 district is located.

2 Section 7. SPECIAL ASSESSMENT--LIEN CREATED.--

3 A. The district board may impose a special
4 assessment on residential property within the district to
5 facilitate the financing of residential solar technology
6 improvements to the property. The special assessment shall be
7 sufficient in the case of each property to pay the costs of the
8 financing of the residential solar technology improvements,
9 including the costs of bond issuance, debt service and
10 administrative costs of the district and the municipality or
11 county in which the district is located.

12 B. The special assessment shall be levied and
13 collected at the same time and in the same manner as property
14 taxes are levied and collected, except to the extent that the
15 district board has provided for other imposition and collection
16 procedures. Money derived from the imposition of the special
17 assessment shall be kept separately from other funds of the
18 governing body.

19 C. A special assessment shall constitute a lien on
20 the property, which shall be effective during the period in
21 which the assessment is imposed and shall have priority over
22 all other liens except liens for ad valorem property taxes.

23 D. The obligation to pay the special assessment may
24 be prepaid and permanently satisfied, and the district board
25 shall specify the conditions under which this may be achieved.

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1 Section 8. SPECIAL ASSESSMENT BONDS.--

2 A. A district may issue one or more series of bonds
3 to provide money for solar technology improvements to
4 residential property in the district, and the bonds may be
5 payable from the special assessments levied pursuant to one or
6 more assessment resolutions.

7 B. For any bonds issued pursuant to the Residential
8 Solar Technology Improvement District Act, the district board
9 shall prescribe the denominations of the bonds, the principal
10 amount of each issue and the form of the bonds and shall
11 establish the maturities, which shall not exceed twenty years,
12 interest payment dates and interest rates, whether fixed or
13 variable, not exceeding the maximum rate stated in the
14 resolution of the district board. The bonds may be sold by
15 competitive bid or negotiated sale for public or private
16 offering at, below or above par. The proceeds of the bonds
17 shall be deposited with the treasurer, or with a trustee or
18 agent designated by the district board, to the credit of the
19 district to be withdrawn for the purposes provided by the
20 Residential Solar Technology Improvement District Act. Pending
21 that use, the proceeds may be invested as determined by the
22 district. The bonds shall be made payable as to both principal
23 and interest solely from revenues of the district, and shall
24 specify the revenues pledged for such purposes, and shall
25 contain such other terms, conditions, covenants and agreements

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1 as the district board deems proper.

2 C. No holder of special assessment bonds issued
3 pursuant to the Residential Solar Technology Improvement
4 District Act may compel any exercise of the taxing power of the
5 district, municipality or county to pay the bonds or the
6 interest on the bonds. Special assessment bonds issued
7 pursuant to that act are not a debt or general obligation of
8 the county or the municipality in which the district is
9 located, nor is the payment of special assessment bonds
10 enforceable out of any money other than the revenue pledged to
11 the payment of the bonds.

12 D. Pursuant to this section, the district may issue
13 and sell refunding bonds to refund any special assessment bonds
14 of the district authorized by the Residential Solar Technology
15 Improvement District Act. Refunding bonds issued pursuant to
16 this section shall have a final maturity date no later than the
17 final maturity date of the bonds being refunded.

18 Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--
19 TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

20 A. The governing body, at its option, may authorize
21 the appointment of a separate district board. In the case of
22 an appointed district board, the directors shall serve an
23 initial term of six years. If a vacancy occurs on the district
24 board because of death, resignation or inability of the
25 director to discharge the duties of director, the governing

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1 body shall appoint a director to fill the vacancy, who shall
2 hold office for the remainder of the unexpired term until the
3 appointed director's successor is appointed or elected.

4 B. At the end of the appointed director's initial
5 term, the governing body shall resume governance of the
6 district as its board, or, at its option, shall hold an
7 election of directors by majority vote of the property owners
8 in the district, pursuant to Section 10 of the Residential
9 Solar Technology Improvement District Act.

10 Section 10. NOTICE AND CONDUCT OF ELECTION FOR DISTRICT
11 BOARD.--

12 A. An election pursuant to the Residential Solar
13 Technology Improvement District Act for the purpose of election
14 of directors of a district board shall be called by mailing
15 notices to the owners of property included in the district not
16 less than twenty days before the election. The property tax
17 assessment rolls shall be used to determine the owners of
18 property included in the district. Notice shall also be
19 published one time in a newspaper of general circulation in the
20 municipality or county. The notice shall state the purpose of
21 the election, the date of the election, the place of holding
22 the election, the hours during the day in which the polls will
23 be open and provisions for voting by mail.

24 B. Within thirty days after an election, the
25 district board shall meet and canvass the returns, determining

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1 the number of votes properly cast. A majority of the votes
2 cast at the election shall be required for election of a member
3 to the district board.

4 Section 11. POWERS AND DUTIES OF A RESIDENTIAL SOLAR
5 TECHNOLOGY IMPROVEMENT DISTRICT.--

6 A. The residential solar technology improvement
7 district board shall:

8 (1) establish guidelines and standards for
9 residential solar technology improvements to be made to
10 property included in the district;

11 (2) establish guidelines and procedures for a
12 property owner to enter into an agreement with the district
13 board to include property in the district;

14 (3) require that the property owner agree that
15 any carbon credits accruing pursuant to any state or federal
16 law as a result of the owner's residential solar technology
17 improvement in the district shall be credited to the
18 municipality or county that formed the district;

19 (4) establish guidelines for the documentation
20 required from a property owner prior to property being included
21 in the district of the owner's contracts or agreements for
22 purchase and installation of residential solar technology
23 improvements;

24 (5) establish the amount of and impose special
25 assessments for the financing of the residential solar

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1 technology improvements, including the costs of bond issuance,
2 debt service and administrative costs of the district and the
3 municipality or county in which the district is located; and

4 (6) enter into contracts, agreements and trust
5 indentures to obtain credit enhancement or liquidity support
6 for its bonds and process the issuance, registration, transfer
7 and payment of its bonds and the disbursement and investment of
8 proceeds of the bonds.

9 B. The district board may enter into contracts to
10 carry out the purposes of the district on such terms and with
11 such persons as the board determines to be appropriate.

12 Section 12. CHANGE IN DISTRICT.--

13 A. At any time after adoption of a resolution
14 creating a district, property may be added to the district at
15 the request of the owner of the property, upon adoption of a
16 resolution of the district board.

17 B. Property may be deleted from the district only
18 upon request of the property owner and adoption of a resolution
19 of intention to do so by the district board. Property within
20 the district that is subject to the lien of special assessments
21 or other charges imposed pursuant to the Residential Solar
22 Technology Improvement District Act shall not be deleted from
23 the district while there are bonds outstanding that are payable
24 by such special assessments or charges.

25 Section 13. DISSOLUTION OF DISTRICT.--The district may

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1 be dissolved by the district board by a resolution of the
2 district board upon a determination that the district has no
3 outstanding bond obligations. The district shall not be
4 dissolved if any bonds of the district remain outstanding
5 unless an amount of money sufficient, together with investment
6 income thereon, to make all payments due on the bonds either at
7 maturity or prior redemption has been deposited with a trustee
8 or escrow agent and pledged to the payment and redemption of
9 the bonds. The district may continue to operate after
10 dissolution only as needed to collect money and make payments
11 on any outstanding bonds.